

Inventors: Shaw et al.
Serial Number 09/653413

PATENT APPLICATION
Navy Case 80172

REMARKS AND ARGUMENTS

Claims 23-44 are submitted to replace the currently rejected claims 1-22 which have now been cancelled. These new claims better define the applicant's invention directed to a method and system of distributing in real-time geospatial data over a object oriented spatial database network with data including two or more disparate formats. These new claims are believed to place the case in condition for allowance.

Prior Art Rejections under 35 U.S.C. 102(e)

The Examiner has rejected claims 1, 2, 6, 8, 10-12, 14-16, 18, 19, 21, 22 as being anticipated by Chan et al. (U.S. Patent 6,381,603)

The applicant now submits that the newly amended claims each including the feature of distributing in real-time geospatial data over a object oriented spatial database network are not taught by this prior art. Chan does not teach the implementation of an object oriented spatial database network. Chan also does not teach the objects including two or more disparate formats.

The Examiner has also rejected claims 1, 6, and 7 as anticipated by Darcie (U.S. Patent 6,577,714).

While Darcie does appear to teach the implementation of an object oriented data base, Darcie does not teach the newly amended claim of multiple data formats of two or more disparate formats for the data.

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Thus in view of the applicant's amended claims, this ground of rejection has been overcome.

Prior Art Rejections under 35 U.S.C. 102(b)

The Examiner has rejected claims 1 and 6 as being anticipated by Bouve et al. (U.S. Patent 5,682,525)

As stated above, the applicant now submits that the newly amended claims each including the feature of distributing in real-time geospatial data over a object oriented spatial database network are not taught by this prior art. Bouve does not teach the implementation of an object oriented spatial database network. Bouve appears to mention the possibility of programming a database in an object oriented manner, while the applicant's invention actually reduces this embodiment to practice and affirmatively claims the actual object oriented implementation. Additionally, Bouve does not appear to show the newly amended feature of two or more data formats for the data objects

Thus in view of the applicant's amended claims, this ground of rejection has been overcome.

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Prior Art Rejections under 35 U.S.C. 103

The Examiner has rejected claims 3 and 4 as being obvious in view of Chan in view of Koller and further in view of Trovato. As argued by the applicant above, the base teaching of Chan does apply to the newly amended claims and thus this ground of rejection is submitted to be overcome.

The Examiner has rejected claim 9 as being obvious over Darcie in combination with the Examiner's official notice of VPF and RPF in a computer networking environment. The newly amended feature of the claims that the data includes two or more data formats for the data objects does not appear to be shown by Darcie and thus the Darcie reference is overcome by the amended claim. Regarding the Examiner's use of official notice of VPF and RPF in a computer networking environment, the applicant respectfully traverses this ground of rejection relying on the following section of the MPEP Section 2144.03:

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory."); *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

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It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002) (In reversing the Board's decision, the court stated " 'common knowledge and common sense' on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation..The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.").

Thus in this case the Examiner can not rely on conclusory statements and must show some teaching that VPF and RPF are common in computer networking and that there is motivation to combine these features with the teaching of Darcie to achieve the applicant's invention.

The Examiner has rejected claims 5, 13, and 17 as being obvious over Chan in view of Chan (IEEE publication). The applicant submits that the base teaching of Chan is no longer applicable because the amended claims specifically recite the embodiment of an object oriented database network. The base teaching of Chan does not show this specific embodiment. Additionally Chan does not teach the feature of data including two or more disparate data formats.

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The Examiner has rejected claim 20 as being obvious over Chan in view of what was known at the time of the invention as stated by the Examiner as Official Notice. The applicant submits the base teaching of Chan is no longer applicable in view of the specific amendment to an object oriented database network. The applicant also submits that Chan does not show the new feature of data including two or more disparate formats. With regard to the Examiner's use of Official notice as the basis for a prior art rejection, the applicant respectfully traverses this ground of rejection in reliance on the MPEP Section 2144.03 as follows:

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory."); *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence

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support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002) (In reversing the Board's decision, the court stated " 'common knowledge and common sense' on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation..The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.").

With regard to the Examiner's reliance on official notice for the teaching of VPF or RPF standards in a database, the Examiner can not rely on a conclusory statement of this type and must show this teaching either from a common reference source or patent or other prior art and must also show that there is a motivation to combine this teaching with the base reference of Chan to achieve the applicant's claimed invention.

In view of the arguments made above, it is submitted that the newly amended claims overcome the obviousness rejections made under 35 U.S.C. 103.

Conclusion

The Examiner recites the correspondence between the applicant's claims and applicant's own prior art, but on further consideration as discussed in the remarks above the claims as currently amended are distinguishable from the cited prior art. The newly amended claims emphasize the object oriented database network which is not shown in the prior art as well as the use of two or more disparate data formats which is also not shown in the prior art.

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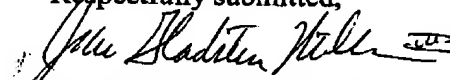
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In view of the differences between the claims as currently presented and the cited prior art of the applicant's own publication it is now submitted that the applicant's newly submitted claims overcome the prior art of record.

In view of the foregoing amendments and arguments, the Examiner is respectfully requested to pass these claims to allowance.

Please charge any additional fees due or credit overpayment of fees to Deposit Account Number 50-0281.

Respectfully submitted,


John Gladstone Mills III, Esq.

Reg. No. 49,054

202-404-1553

April 18, 2004

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